Docket No. 01-0539

Comments of Gallatin River Communications L.L.C. On Staff's Third Draft dated March 4, 2002

Gallatin's comments do not contain a "redline" version because most of the suggested changes are self-explanatory. The comments are organized by Section number.

Section 731.115 (b)(1)(D). Section 731.115 generally defines Level 1, Level 2, and Level 3 carriers. Subpart (b) contains the criteria to be classified as a Level 2 carrier. Subpart (b)(1)(D) requires that the carrier "not have a currently effective Rural Exemption." Subpart (c)(1) contains the criteria to be classified as a Level 3 carrier. It requires the carrier to be a LEC "in the State of Illinois with a Rural Exemption." It is redundant to both define Level 2 carriers as *not* having a Rural Exemption and to define Level 3 carriers as *having* a Rural Exemption. Therefore, Gallatin suggests that the reference to not having a Rural Exemption in 731.115(b)(1)(D) be deleted in its entirety.

Sections 731.600 (a) through (d). Gallatin supports the idea that carriers who engage in a small number of wholesale "transactions" should not be unnecessarily burdened with extensive reporting and regulatory requirements. Gallatin believes this idea guided staff in proposing a threshold with an exemption for carriers that are below the threshold in this version of the proposed rule. However, Gallatin believes that the thresholds, exemptions and self-certifications in subparts (b) and (c) of this section are unduly complex and unworkable for Level 2 carriers – particularly Level 2 carriers that

are incumbent LECs. Regulatory requirements that are "variable" and fluctuate over time (as proposed by staff) are difficult and burdensome to administer.

If there is a even a remote possibility that a carrier will not qualify for the exemption, the carrier will still be required to capture all the required information in an appropriate format in case it does not qualify for the exemption. Therefore, the carrier is really not exempted from anything. Because the carrier can not possible know how many wholesale transactions may occur in future months, the carrier will never know for sure if it will be exempted.

In the real-world competitive marketplace, it is likely that the number of wholesale transactions engaged in by a Level 2 carrier will vary substantially from month to month. Demand is likely to be quite "lumpy" in Level 2 areas. Level 2 carriers are likely to have a relatively small number of wholesale competitors interested in providing service in the level 2 carrier's service area. When one or more of the wholesale competitors engages in marketing a special promotion or begin advertising in a level 2 carrier's service area, demand is likely to increase substantially and quickly. When the marketing or special promotion ends, demand decreases quickly. This has been Gallatin's experience in the marketplace.

Large carriers typically have a greater number of competitors with some competitors marketing virtually all of the time. Thus, demand would be less lumpy than can be expected for level 2 carriers. The various "ratios" suggested in Staff's proposed rule would be very difficult for Level 2 carriers to administer in a cost-effective manner. Arguably, the information and "calculations" required to determine if a carrier qualifies for an exemption are more onerous than what the carrier is exempted from.

If the proposed thresholds and exemptions are being proposed to treat CLECs that provide some wholesale services in an appropriate manner, Gallatin requests that staff consider an option that does not negatively impact other Level 2 carriers.

Gallatin appreciates the concerns Staff has demonstrated in this proceeding to not unduly burden medium and small sized carriers with unnecessary regulatory burdens. However, Gallatin believes that the "threshold" and exemptions proposed by Staff have the potential to create greater, rather than lesser burdens. Gallatin suggests that all references to thresholds and exemptions be deleted.

If Staff continues to believe that thresholds with exemptions are appropriate, Gallatin urges the Staff to substantially increase the thresholds in Section 731.600(b).

Section 731.610 (a)(3)(D). The phase "per hour" should be deleted. The correct standard is "per day."

Section 731.610 (b). This Section allows the Commission to escalate remedy amounts by an amount equal to the percentage change in the GDP Implicit Price Deflator. Gallatin thinks this Section is unnecessary since the Commission can always reconsider its own rules. Also, the Commission may wish to make changes to the amounts of remedies that are not related to the GDP standard currently in the rule. For example, the Commission may find that the amounts of the remedies are too small or too large and change them for that reason. Also, Section 13-512 of the PUA *requires* the Commission

to review its rules every 2 years. Gallatin submits that this required periodic review every 2 years would be a more appropriate time to reconsider the remedy levels.

Section 731.620 (a)(4). This section requires that a Level 2 carrier that provides wholesale services identify the "[t]op 3 carriers receiving wholesale service quality credits…." in its quarterly report. Gallatin is not sure what the word "top" means in this context. Is it the wholesale purchasers that had the most transactions with the Level 2 carrier? Is it the wholesale purchasers who collected the most in penalties (which might not be the wholesale purchasers that had the most transactions)? Further, Gallatin believes this requirement is unnecessary and redundant because it is already inherent in the information that Level 2 carriers are required to provide in their quarterly reports. Therefore, Gallatin urges staff to delete Section 731.620 (a)(4) in its entirety.

Section 731.620 (b). As currently drafted, this section does not appear to make grammatical sense. It should be redrafted. Additionally, Gallatin urges Staff to change the monthly report in that section to a quarterly report. This would reduce the burden on Level 2 carriers and still provide timely information. This is particularly appropriate because the reports to be provided to the purchasers of wholesale services contain the same information as the reports to be provided to the Commission. Also, it would make it consistent with the quarterly report required by section 731.620 (a). It will be much less burdensome to Level 2 carriers if these reports are due at the same intervals.

Section 731.620 (a)(3). This section requires Level 2 carriers to report its "[l]evel of performance on an aggregate basis by measure." Gallatin is not sure what information is sought and this should be clarified.

Section 731.620 (c). This section requires a "business rule document." Gallatin does not understand the purpose or intent of this requirement. It is Gallatin's belief that the information required in the proposed reports to the ICC and wholesale customers is relatively self-explanatory and that additional explanation is unnecessary.

Section 731.630. Gallatin agrees it is appropriate to allow parties to an interconnection agreement to agree to requirements different from those in the rule in the manner suggested in this section.

Section 731.635 (a), (b) and (c). Gallatin thinks that provisions relating to "converting" a carrier from Level 2 to Level 1 are unnecessary and unwise. The 400,000-line limitation in section 731.115 (a)(2) adequately deals with issues related to a Level 2 carrier growing through acquisition of another carrier. Further, as pointed out earlier, the Commission is required to review its rules every 2 years. If there is a substantial change in the circumstances of Level 2 or 3 carriers, the Commission can adequately address the situation during its review of its rules.

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